

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID M. FRANKLIN,
Plaintiff,
v.
DENIS MCDONOUGH,
Defendant.

Case No. 21-cv-06328-VKD

**ORDER FOR PLAINTIFF TO SHOW
CAUSE RE DISMISSAL FOR FAILURE
TO PROSECUTE**

The Court held a conference via Zoom webinar on June 7, 2022 to discuss the status of this matter. Dkt. No. 38. Defendant appeared. Plaintiff David Franklin did not. The Court invited the parties in advance of the conference to tell the Court whether they preferred an in-person appearance. Dkt. No. 35. The Court received no response from Mr. Franklin. Nor did he respond to the Court's attempts to reach him by email during the conference. The Court was also unable to reach Mr. Franklin by telephone, as the phone number he provided to the Court resulted in an automated message stating that the call could not be completed as dialed.

At the conference, defense counsel advised that he was able to send an email to Mr. Franklin as recently as May 23, 2022 to discuss continuing the deadline for a settlement conference. However, defense counsel stated that Mr. Franklin last communicated with him by email in February 2022, and that Mr. Franklin did not participate in the scheduling of the settlement conference and has not indicated whether he will participate in the settlement conference Judge van Keulen has scheduled for July 20, 2022. Further, the Court is informed that the Pro Se Program has attempted (unsuccessfully) to contact Mr. Franklin, despite the Court's suggestion that Mr. Franklin contact the Program regarding assistance of pro bono counsel at a

1 settlement conference. *See* Dkt. No. 33.


2 Mr. Franklin is responsible for prosecuting his action in a timely manner. To the extent
3 any of his contact information may have changed, he is also responsible for keeping the Court and
4 opposing counsel apprised of his current contact information.¹ The Court is concerned by Mr.
5 Franklin's failure to respond to communications from defense counsel, the Pro Se Program, and
6 the Court, as well as his failure to appear at the court-ordered status conference.

7 The Court possesses the inherent power to dismiss an action sua sponte "to achieve the orderly
8 and expeditious disposition of cases." *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-33 (1962). By
9 **June 17, 2022**, Mr. Franklin shall file a written response to this order explaining why this action
10 should not be dismissed for his failure to prosecute this case. Additionally, Mr. Franklin shall appear
11 in person on **June 21, 2022, 10:00 a.m., in Courtroom 2, Fifth Floor of the United States District**
12 **Court, 280 South First Street, San Jose, California** to address the Court's concerns about his
13 apparent inattention to this action.² If Mr. Franklin fails to respond to this order by the June 17, 2022
14 deadline or to appear at the June 21, 2022 show cause hearing, the Court will dismiss this action
15 without prejudice.

16 Although Mr. Franklin is a e-filer, the Clerk of the Court shall mail a copy of this order to him
17 at the mailing address he provided that is noted on the Court's docket.

18 **IT IS SO ORDERED.**

19 Dated: June 7, 2022

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21 
22 VIRGINIA K. DEMARCHI
23 United States Magistrate Judge
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27 ¹ Defense counsel confirmed that he does not have contact information for Mr. Franklin that is
28 different than what is reflected on the Court's docket.

² Defendant is not required to attend the June 21, 2022 hearing.